

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

JAMES SMITH, KATHY SMITH,
CAMERON SMITH, AND STEPHANIE
SMITH

Plaintiffs,

v.

DEPARTMENT OF FAMILY AND
PROTECTIVE SERVICES,
CATHERINE MITCHELL, AND
ANEIDRA CLEVELAND,

Defendants.

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CASE NO. _____

NOTICE OF REMOVAL

NOW COME Defendants, Department of Family and Protective Services, Aneidra Cleveland, and Catherine Mitchell, and respectfully show that:

1. **Removal Provision:** This removal is pursuant to 28 U.S.C. §1441(a). In their Original Petition, Plaintiffs allege Defendants violated their Constitutional rights in connection with the removal of their children Amy and Stephanie Smith from their care and control. Plaintiffs assert, among other things, that Defendants' actions deprived them of their rights, privileges, and immunities secured by the Constitution or the laws, of the United States and made actionable by 42 U.S.C. § 1983.
2. **State Action:** This action was filed in the 96th Judicial District Court of Tarrant County, Texas, on April 25, 2010, Cause No. DC-096-244916-10. Plaintiffs are James Smith, Kathy Smith, Cameron Smith, and Stephanie Smith. Defendants are Department of Family and Protective Services ("DFPS"), Catherine Mitchell and Aneidra Cleveland.

Defendants Catherine Mitchell and Aneidra Cleveland were served with this lawsuit. As of this date Defendant DFPS has not been properly served with citation in this case.

Venue is proper in the United States District Court for the Northern District of Texas, Fort Worth Division.

3. **Nature of the Lawsuit:** Plaintiffs allege that Defendants' removal of their children from Plaintiffs' care and control violated Plaintiffs' Federal Constitutional rights made actionable by 42 U.S.C. § 1983.
4. **Jury Demand:** Plaintiffs requested a trial by jury in their Original Petition.
5. **Consent:** Upon information and belief no other Defendants have been served at the time of this removal.
6. **Removal Requirements of 28 U.S.C. §1441:** Plaintiffs' allegations regarding violation of their Federal Constitutional rights raise federal questions under 42 U.S.C. § 1983.
7. **Compliance with Deadline:** Defendant Catherine Mitchell was served with the Original Petition on April 26, 2010. Defendants have 30 days in which to remove. Therefore, this removal is timely. Defendant Aneidra Cleveland and Defendant DFPS received notice of the suit on April 26, 2010. Defendants Catherine Mitchell and Aneidra Cleveland filed their Answers and Affirmative Defenses in state court on May 14, 2010. Defendant DFPS filed its Answer and Affirmative Defenses in state court on May 24, 2010.
8. **State Court Pleadings:** A true and correct copy of all process and pleadings served upon Defendants in the state court action is being filed with this notice as required by 28 U.S.C. §1446(a).

ACCORDINGLY, Defendants pray that this cause be removed to the United States District Court Northern District of Texas, Fort Worth Division, pursuant to Section 1441 of Title 28 of the United States Code.

Dated: May 26, 2010

Respectfully submitted,

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Attorney General of Texas

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First Assistant Attorney General

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/s/ Darren G. Gibson

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ATTORNEYS FOR DEFENDANTS
Department of Family and Protective
Services, Aneidra Cleveland and
Catherine Mitchell

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent *via U.S. certified mail, return receipt requested*, on May 26, 2010, to:

Justin J. Sisemore
Sisemore & Associates
603 East Belknap Street
Fort Worth, Texas 76102
Counsel for Plaintiffs

/s/ Darren G. Gibson
DARREN G. GIBSON
Assistant Attorney General